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12 | Attorneys for Defendants

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

17 TYRONE HAZEL, ROXANE EVANS,  
18 VALERIE TORRES, and RHONDA  
HYMAN, individually and on behalf of all  
others similarly situated.

20 Plaintiffs.

21 |

vs.

22 PRUDENTIAL FINANCIAL, INC. and  
23 ACTIVEPROSPECT, INC.,

24 Defendants.

Case No. 3:22-cv-07465-CRB

**DEFENDANT PRUDENTIAL  
FINANCIAL, INC.'S ANSWER AND  
AFFIRMATIVE DEFENSES TO  
PLAINTIFFS' FIRST AMENDED  
COMPLAINT**

Judge: Hon. Charles R. Breyer

**DEMAND FOR JURY TRIAL**

## ANSWER

Defendant PRUDENTIAL FINANCIAL, INC.’ (“Prudential”) hereby answers the First Amended Complaint (“FAC”) of Plaintiffs TYRONE HAZEL, ROXANE EVANS, VALERIE TORRES, and RHONDA HYMAN (collectively, “Plaintiffs”) as follows:

1. Prudential admits that it offers consumers life insurance quotes, and that one method by which consumers may obtain a life insurance quote from Prudential is by filling out a webform on term.prudential.com. Except as specifically admitted herein, Prudential denies the allegations of Paragraph 1 of the FAC.

2. Prudential admits that ActiveProspect sells software and that Prudential can use ActiveProspect's software by adding the ActiveProspect JavaScript into the source code of term.prudential.com. Prudential lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this Paragraph, and on that basis denies the remaining allegations of Paragraph 2 of the FAC.

3. Prudential admits that it uses ActiveProspect's TrustedForm software on term.prudential.com. Except as specifically admitted herein, Prudential denies the allegations of Paragraph 3 of the FAC.

4. The allegations of Paragraph 4 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, Prudential denies the allegations of Paragraph 4 of the FAC.

5. The allegations of Paragraph 5 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, Prudential denies the allegations of Paragraph 5 of the FAC.

6. Prudential is without knowledge or information as to the truth of the allegations of Paragraph 6 of the FAC regarding Plaintiffs' actions or intentions and on that basis denies those allegations. The remaining allegations of Paragraph 6 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, Prudential denies those allegations.

1       7. The allegations of Paragraph 7 of the FAC are legal arguments or conclusions as to  
2 which no responsive pleading is required. To the extent a response may be required, Prudential  
3 denies the allegations of Paragraph 7 of the FAC.

4        8. The allegations of Paragraph 8 of the FAC are legal arguments or conclusions as to  
5 which no responsive pleading is required. To the extent a response may be required, Prudential  
6 denies the allegations of Paragraph 8 of the FAC.

7        9.        The allegations of Paragraph 9 of the FAC are legal arguments or conclusions as to  
8 which no responsive pleading is required. To the extent a response may be required, Prudential  
9 denies the allegations of Paragraph 9 of the FAC.

10        10. The allegations of Paragraph 10 of the FAC are legal arguments or conclusions as  
11 to which no responsive pleading is required. To the extent a response may be required, Prudential  
12 denies the allegations of Paragraph 10 of the FAC.

13        11. The allegations of Paragraph 11 of the FAC are legal arguments or conclusions as  
14 to which no responsive pleading is required. To the extent a response may be required, Prudential  
15 denies the allegations of Paragraph 11 of the FAC.

16           12. Prudential is without knowledge or information as to the truth of the allegations of  
17 Paragraph 12 of the FAC and on that basis denies the allegations.

18        13. Prudential is without knowledge or information as to the truth of the allegations of  
19 Paragraph 13 of the FAC and on that basis denies the allegations.

20           14. Prudential is without knowledge or information as to the truth of the allegations of  
21 Paragraph 14 of the FAC and on that basis denies the allegations.

22        15. Prudential is without knowledge or information as to the truth of the allegations of  
23 Paragraph 15 of the FAC and on that basis denies the allegations.

24 ||| 16. Prudential admits the allegations of Paragraph 16 of the FAC.

25 ||| 17. Prudential admits the allegations of Paragraph 17 of the FAC.

26 || 18. Prudential admits the allegations of Paragraph 18 of the FAC.

27 19. Prudential admits the allegations of Paragraph 19 of the FAC.

1       20. Prudential admits the allegations of Paragraph 20 of the FAC on information and  
 2 belief.

3       21. Prudential admits that ActiveProspect provides a software product called  
 4 “TrustedForm.” Except as specifically admitted herein, Prudential lacks knowledge or  
 5 information sufficient to form a belief as to the truth of the remaining allegations of this  
 6 Paragraph, and on that basis denies the remaining allegations of Paragraph 21 of the FAC.

7       22. Prudential is without knowledge or information as to the truth of the allegations of  
 8 Paragraph 22 of the FAC and on that basis denies the allegations.

9       23. To the extent the allegations in Paragraph 23 purport to describe or quote an  
 10 ActiveProspect patent, Prudential asserts that the patent is the best evidence of its contents.  
 11 Prudential denies the allegations to the extent they do not accurately represent ActiveProspect’s  
 12 patent. Except as specifically admitted herein, Prudential denies the allegations of Paragraph 23 of  
 13 the FAC.

14       24. Prudential admits that ActiveProspect provides a software product called  
 15 TrustedForm, and that TrustedForm is a lead certification product that helps businesses comply  
 16 with regulations like the Telephone Consumer Protection Act (“TCPA”) by documenting  
 17 consumer consent. To the extent the allegations in Paragraph 24 purport to describe or quote one  
 18 or more documents or webpages, Prudential asserts that those documents or webpages are the best  
 19 evidence of their contents. Prudential denies the allegations to the extent they do not accurately  
 20 represent the documents’ or webpages’ full content and context. Except as specifically admitted  
 21 herein, Prudential denies the allegations of Paragraph 24 of the FAC.

22       25. To the extent the allegations in Paragraph 25 purport to describe or quote one or  
 23 more documents or webpages, Prudential asserts that those documents or webpages are the best  
 24 evidence of their contents. Prudential denies the allegations to the extent they do not accurately  
 25 represent the documents’ or webpages’ full content and context. Except as specifically admitted  
 26 herein, Prudential denies the allegations of Paragraph 25 of the FAC.

27       26. To the extent the allegations in Paragraph 26 purport to describe or quote one or  
 28 more documents or webpages, Prudential asserts that those documents or webpages are the best

1 evidence of their contents. Prudential denies the allegations to the extent they do not accurately  
 2 represent the documents' or webpages' full content and context. Prudential lacks knowledge or  
 3 information sufficient to form a belief as to the truth of the remaining allegations of this  
 4 Paragraph, and on that basis denies the remaining allegations of Paragraph 26 of the FAC.

5       27. To the extent the allegations in Paragraph 27 purport to describe or quote one or  
 6 more documents or webpages, Prudential asserts that those documents or webpages are the best  
 7 evidence of their contents. Prudential denies the allegations to the extent they do not accurately  
 8 represent the documents' or webpages' full content and context. Prudential lacks knowledge or  
 9 information sufficient to form a belief as to the truth of the remaining allegations of this  
 10 Paragraph, and on that basis denies the remaining allegations of Paragraph 27 of the FAC.

11       28. Prudential lacks knowledge or information sufficient to form a belief as to the truth  
 12 of the allegations of this Paragraph, and on that basis denies the allegations of Paragraph 28 of the  
 13 FAC.

14       29. Prudential lacks knowledge or information sufficient to form a belief as to the truth  
 15 of the allegations of this Paragraph, and on that basis denies the allegations of Paragraph 29 of the  
 16 FAC.

17       30. To the extent the allegations in Paragraph 30 purport to describe or quote an  
 18 ActiveProspect patent, Prudential asserts that the patent is the best evidence of its contents.  
 19 Prudential denies the allegations to the extent they do not accurately represent ActiveProspect's  
 20 patent. Except as specifically admitted herein, Prudential denies the allegations of Paragraph 30 of  
 21 the FAC.

22       31. To the extent the allegations in Paragraph 31 purport to describe or quote an  
 23 ActiveProspect patent, Prudential asserts that the patent is the best evidence of its contents.  
 24 Prudential denies the allegations to the extent they do not accurately represent ActiveProspect's  
 25 patent. Except as specifically admitted herein, Prudential denies the allegations of Paragraph 31 of  
 26 the FAC.

27       32. Prudential admits that Paragraph 32 of the FAC includes quotations from a  
 28 webpage at freedom-to-tinker.com, and that the webpage is the best evidence of its contents. The

1 remaining allegations of Paragraph 32 of the FAC are legal arguments or conclusions as to which  
 2 no responsive pleading is required. To the extent a response may be required, Prudential is  
 3 without knowledge or information as to the truth of the allegations of Paragraph 32 of the FAC  
 4 and on that basis denies the allegations.

5       33. Prudential lacks knowledge or information sufficient to form a belief as to the truth  
 6 of the allegations of this Paragraph, and on that basis denies the allegations of Paragraph 33 of the  
 7 FAC.

8       34. To the extent the allegations in Paragraph 34 purport to quote a webpage,  
 9 Prudential asserts that that webpage is the best evidence of its content. Prudential denies the  
 10 allegations to the extent they do not accurately represent the documents' or webpages' full content  
 11 and context. Prudential is without knowledge or information regarding the remaining allegations  
 12 of Paragraph 34 of the FAC and on that basis denies those allegations.

13       35. Prudential lacks knowledge or information sufficient to form a belief as to the truth  
 14 of the allegations of this Paragraph, and on that basis denies the allegations of Paragraph 35 of the  
 15 FAC.

16       36. Prudential admits that it uses ActiveProspect's TrustedForm software on  
 17 term.prudential.com. Prudential is without knowledge or information as to the truth of the  
 18 remaining allegations in Paragraph 36, and on that basis denies the allegations.

19       37. The allegations of Paragraph 37 of the FAC are legal arguments or conclusions as  
 20 to which no responsive pleading is required. To the extent a response may be required, Prudential  
 21 denies the allegations of Paragraph 37 of the FAC.

22       38. Prudential admits that it provides life insurance, retirement, mutual fund, annuities,  
 23 and investment management services. To the extent the allegations in Paragraph 38 purport to  
 24 describe or quote one or more documents or webpages, Prudential asserts that those documents or  
 25 webpages are the best evidence of their contents. Prudential denies the allegations to the extent  
 26 they do not accurately represent the documents' or webpages' full content and context. Except as  
 27 specifically admitted herein, Prudential denies the allegations of Paragraph 38 of the FAC.

1       39. To the extent the allegations in Paragraph 39 purport to describe or quote one or  
 2 more documents or webpages, Prudential asserts that those documents or webpages are the best  
 3 evidence of their contents. Prudential denies the allegations to the extent they do not accurately  
 4 represent the documents' or webpages' full content and context. Except as specifically admitted  
 5 herein, Prudential denies the allegations of Paragraph 39 of the FAC.

6       40. Prudential admits that it uses ActiveProspect's TrustedForm software on  
 7 term.prudential.com. Except as specifically admitted herein, Prudential denies the allegations of  
 8 Paragraph 40 of the FAC.

9       41. Prudential admits that it uses ActiveProspect's TrustedForm software on  
 10 term.prudential.com. To the extent the allegations in Paragraph 41 purport to describe or quote  
 11 one or more documents or webpages, Prudential asserts that those documents or webpages are the  
 12 best evidence of their contents. Prudential denies the allegations to the extent they do not  
 13 accurately represent the documents' or webpages' full content and context. Except as specifically  
 14 admitted herein, Prudential denies the allegations of Paragraph 41 of the FAC.

15      42. The allegations of Paragraph 42 of the FAC are legal arguments or conclusions as  
 16 to which no responsive pleading is required. To the extent a response may be required, Prudential  
 17 is without knowledge or information as to the truth of the allegations in Paragraph 42 of the FAC,  
 18 and on that basis denies the allegations.

19      43. The allegations of Paragraph 43 of the FAC are legal arguments or conclusions as  
 20 to which no responsive pleading is required. Additionally, to the extent the allegations in  
 21 Paragraph 43 purport to describe or quote one or more documents or webpages, Prudential asserts  
 22 that those documents or webpages are the best evidence of their contents. Prudential denies the  
 23 allegations to the extent they do not accurately represent the documents' or webpages' full content  
 24 and context. Except as specifically admitted herein, Prudential denies the allegations of Paragraph  
 25 43 of the FAC.

26      44. To the extent the allegations in Paragraph 44 purport to describe or quote one or  
 27 more documents or webpages, Prudential asserts that those documents or webpages are the best  
 28 evidence of their contents. Prudential denies the allegations to the extent they do not accurately

1 represent the documents' or webpages' full content and context. Except as specifically admitted  
 2 herein, Prudential denies the allegations of Paragraph 44 of the FAC.

3       45.      The allegations of Paragraph 45 of the FAC are legal arguments or conclusions as  
 4 to which no responsive pleading is required. Additionally, to the extent the allegations in  
 5 Paragraph 45 purport to describe or quote one or more documents or webpages, Prudential asserts  
 6 that those documents or webpages are the best evidence of their contents. Prudential denies the  
 7 allegations to the extent they do not accurately represent the documents' or webpages' full content  
 8 and context. Except as specifically admitted herein, Prudential denies the allegations of Paragraph  
 9 45 of the FAC.

10       46.      The allegations of Paragraph 46 of the FAC are legal arguments or conclusions as  
 11 to which no responsive pleading is required. Additionally, to the extent the allegations in  
 12 Paragraph 46 purport to describe or quote one or more documents or webpages, Prudential asserts  
 13 that those documents or webpages are the best evidence of their contents. Prudential denies the  
 14 allegations to the extent they do not accurately represent the documents' or webpages' full content  
 15 and context. Except as specifically admitted herein, Prudential denies the allegations of Paragraph  
 16 46 of the FAC.

17       47.      The allegations of Paragraph 47 of the FAC are legal arguments or conclusions as  
 18 to which no responsive pleading is required. Additionally, to the extent the allegations in  
 19 Paragraph 47 purport to describe or quote one or more documents or webpages, Prudential asserts  
 20 that those documents or webpages are the best evidence of their contents. Prudential denies the  
 21 allegations to the extent they do not accurately represent the documents' or webpages' full content  
 22 and context. Except as specifically admitted herein, Prudential denies the allegations of Paragraph  
 23 47 of the FAC.

24       48.      The allegations of Paragraph 48 of the FAC are legal arguments or conclusions as  
 25 to which no responsive pleading is required. To the extent a response may be required, Prudential  
 26 denies the allegations of Paragraph 48 of the FAC.

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1       49.     The allegations of Paragraph 49 of the FAC are legal arguments or conclusions as  
2 to which no responsive pleading is required. To the extent a response may be required, Prudential  
3 denies the allegations of Paragraph 49 of the FAC.

4       50.     Prudential admits that in December 2022 Prudential added a pop-up disclosure to  
5 its website, and that the pop-up disclosure currently states, “Pru Branded Path is powered by  
6 Assurance IQ. By using this website, you consent to the real-time collection, storage, use, and  
7 share of information on your device, or provided by you (such as mouse movements and clicks)  
8 for Assurance IQ, LLC and/or its third-party providers. See our Privacy Center for more  
9 information.” To the extent the allegations in Paragraph 50 purport to describe or quote one or  
10 more documents or webpages, Prudential asserts that those documents or webpages are the best  
11 evidence of their contents. Prudential denies the allegations to the extent they do not accurately  
12 represent the documents’ or webpages’ full content and context. Except as specifically admitted  
13 herein, Prudential denies the allegations of Paragraph 50 of the FAC.

14       51.     The allegations of Paragraph 51 of the FAC are legal arguments or conclusions as  
15 to which no responsive pleading is required. To the extent a response may be required, Prudential  
16 denies the allegations of Paragraph 51 of the FAC.

17       52.     The allegations of Paragraph 52 of the FAC are legal arguments or conclusions as  
18 to which no responsive pleading is required. To the extent a response may be required, Prudential  
19 denies the allegations of Paragraph 52 of the FAC.

20       53.     Prudential admits that it uses ActiveProspect’s TrustedForm software on  
21 term.prudential.com. Except as specifically admitted herein, Prudential denies the allegations of  
22 Paragraph 53 of the FAC.

23       54.     The allegations of Paragraph 54 of the FAC are legal arguments or conclusions as  
24 to which no responsive pleading is required. To the extent a response may be required, Prudential  
25 denies the allegations of Paragraph 54 of the FAC.

26       55.     The allegations of Paragraph 55 of the FAC are legal arguments or conclusions as  
27 to which no responsive pleading is required. To the extent a response may be required, Prudential  
28 denies the allegations of Paragraph 55 of the FAC.

1       56. Prudential admits that Paragraph 56 of the FAC purports to summarize the findings  
2 of multiple studies, and that the studies are the best evidence of their contents. The remaining  
3 allegations of Paragraph 56 of the FAC are legal arguments or conclusions as to which no  
4 responsive pleading is required. To the extent a response may be required, Prudential is without  
5 knowledge or information as to the truth of the allegations of Paragraph 56 of the FAC and on that  
6 basis denies the allegations.

7       57. Prudential is without knowledge or information as to the truth of the allegations of  
8 Paragraph 57 of the FAC and on that basis denies the allegations.

9       58. Prudential is without knowledge or information as to the truth of the allegations of  
10 Paragraph 58 of the FAC and on that basis denies the allegations.

11       59. The allegations of Paragraph 59 of the FAC are legal arguments or conclusions as  
12 to which no responsive pleading is required. To the extent a response may be required, Prudential  
13 denies the allegations of Paragraph 59 of the FAC.

14       60. Prudential is without knowledge or information as to the truth of the allegations of  
15 Paragraph 60 of the FAC and on that basis denies the allegations.

16       61. Prudential is without knowledge or information as to the truth of the allegations of  
17 Paragraph 61 of the FAC and on that basis denies the allegations.

18       62. Prudential is without knowledge or information as to the truth of the allegations of  
19 Paragraph 62 of the FAC and on that basis denies the allegations.

20       63. The allegations of Paragraph 63 of the FAC are legal arguments or conclusions as  
21 to which no responsive pleading is required. To the extent a response may be required, Prudential  
22 denies the allegations of Paragraph 63 of the FAC.

23       64. Prudential is without knowledge or information as to the truth of the allegations of  
24 Paragraph 64 of the FAC and on that basis denies the allegations.

25       65. Prudential is without knowledge or information as to the truth of the allegations of  
26 Paragraph 65 of the FAC and on that basis denies the allegations.

27       66. Prudential is without knowledge or information as to the truth of the allegations of  
28 Paragraph 66 of the FAC and on that basis denies the allegations.

1       67.     The allegations of Paragraph 67 of the FAC are legal arguments or conclusions as  
2 to which no responsive pleading is required. To the extent a response may be required, Prudential  
3 denies the allegations of Paragraph 67 of the FAC.

4       68.     Prudential is without knowledge or information as to the truth of the allegations of  
5 Paragraph 68 of the FAC and on that basis denies the allegations.

6       69.     Prudential is without knowledge or information as to the truth of the allegations of  
7 Paragraph 69 of the FAC and on that basis denies the allegations.

8       70.     Prudential is without knowledge or information as to the truth of the allegations of  
9 Paragraph 70 of the FAC and on that basis denies the allegations.

10      71.     The allegations of Paragraph 71 of the FAC are legal arguments or conclusions as  
11 to which no responsive pleading is required. To the extent a response may be required, Prudential  
12 denies the allegations of Paragraph 71 of the FAC.

13      72.     Prudential is without knowledge or information as to the truth of the allegations of  
14 Paragraph 72 of the FAC and on that basis denies the allegations.

15      73.     Prudential is without knowledge or information as to the truth of the allegations of  
16 Paragraph 73 of the FAC and on that basis denies the allegations.

17      74.     The allegations of Paragraph 74 of the FAC are legal arguments or conclusions as  
18 to which no responsive pleading is required. To the extent a response may be required, Prudential  
19 denies the allegations of Paragraph 74 of the FAC.

20      75.     The allegations of Paragraph 75 of the FAC are legal arguments or conclusions as  
21 to which no responsive pleading is required. To the extent a response may be required, Prudential  
22 denies the allegations of Paragraph 75 of the FAC.

23      76.     The allegations of Paragraph 76 of the FAC are legal arguments or conclusions as  
24 to which no responsive pleading is required. To the extent a response may be required, Prudential  
25 denies the allegations of Paragraph 76 of the FAC.

26      77.     The allegations of Paragraph 77 of the FAC are legal arguments or conclusions as  
27 to which no responsive pleading is required. To the extent a response may be required, Prudential  
28 denies the allegations of Paragraph 77 of the FAC.

1       78.     The allegations of Paragraph 78 of the FAC are legal arguments or conclusions as  
 2 to which no responsive pleading is required. To the extent a response may be required, Prudential  
 3 denies the allegations of Paragraph 78 of the FAC.

4       79.     To the extent the allegations in Paragraph 79 purport to describe or quote one or  
 5 more documents or webpages, Prudential asserts that those documents or webpages are the best  
 6 evidence of their contents. Prudential denies the allegations to the extent they do not accurately  
 7 represent the documents' or webpages' full content and context. Except as specifically admitted  
 8 herein, Prudential denies the allegations of Paragraph 79 of the FAC.

9       80.     Prudential is without knowledge or information as to the truth of the allegations of  
 10 the first sentence of Paragraph 80 of the FAC and on that basis denies the allegations. To the  
 11 extent the remaining allegations in Paragraph 80 of the FAC purport to describe or quote one or  
 12 more documents or webpages, Prudential asserts that those documents or webpages are the best  
 13 evidence of their contents. Prudential denies the allegations to the extent they do not accurately  
 14 represent the documents' or webpages' full content and context. Except as specifically admitted  
 15 herein, Prudential denies the allegations of Paragraph 80.

16       81.     The allegations of Paragraph 81 of the FAC are legal arguments or conclusions as  
 17 to which no responsive pleading is required. To the extent a response may be required, Prudential  
 18 denies the allegations of Paragraph 81 of the FAC.

19       82.     The allegations of Paragraph 82 of the FAC are legal arguments or conclusions as  
 20 to which no responsive pleading is required. To the extent a response may be required, Prudential  
 21 denies the allegations of Paragraph 82 of the FAC.

22       83.     The allegations of Paragraph 83 of the FAC are legal arguments or conclusions as  
 23 to which no responsive pleading is required. To the extent a response may be required, Prudential  
 24 denies the allegations of Paragraph 83 of the FAC.

25       84.     The allegations of Paragraph 84 of the FAC are legal arguments or conclusions as  
 26 to which no responsive pleading is required. To the extent a response may be required, Prudential  
 27 denies the allegations of Paragraph 84 of the FAC.

85. The allegations of Paragraph 85 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, Prudential denies the allegations of Paragraph 85 of the FAC.

4       86. The allegations of Paragraph 86 of the FAC are legal arguments or conclusions as  
5 to which no responsive pleading is required. To the extent a response may be required, Prudential  
6 denies the allegations of Paragraph 86 of the FAC.

7       87. The allegations of Paragraph 87 of the FAC are legal arguments or conclusions as  
8 to which no responsive pleading is required. To the extent a response may be required, Prudential  
9 denies the allegations of Paragraph 87 of the FAC.

10        88. The allegations of Paragraph 88 of the FAC are legal arguments or conclusions as  
11 to which no responsive pleading is required. To the extent a response may be required, Prudential  
12 denies the allegations of Paragraph 88 of the FAC.

## COUNT I

## **Violation of the California Invasion of Privacy Act (“CIPA”) Cal. Penal Code § 631**

15        89. Paragraph 89 is a mere reiteration of past allegations to which no response is  
16 required. To the extent a response may be required, Prudential incorporates its earlier responses to  
17 the foregoing paragraphs.

18       90. The allegations of Paragraph 90 of the FAC are legal arguments or conclusions as  
19 to which no responsive pleading is required. To the extent a response may be required, Prudential  
20 denies the allegations of Paragraph 90 of the FAC.

21       91. The allegations of Paragraph 91 of the FAC are legal arguments or conclusions as  
22 to which no responsive pleading is required. To the extent a response may be required, Prudential  
23 denies the allegations of Paragraph 91 of the FAC.

24        92. The allegations of Paragraph 92 of the FAC are legal arguments or conclusions as  
25 to which no responsive pleading is required. To the extent a response may be required, Prudential  
26 denies the allegations of Paragraph 92 of the FAC.

93. The allegations of Paragraph 93 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, Prudential denies the allegations of Paragraph 93 of the FAC.

4       94. The allegations of Paragraph 94 of the FAC are legal arguments or conclusions as  
5 to which no responsive pleading is required. To the extent a response may be required, Prudential  
6 denies the allegations of Paragraph 94 of the FAC.

7       95. The allegations of Paragraph 95 of the FAC are legal arguments or conclusions as  
8 to which no responsive pleading is required. To the extent a response may be required, Prudential  
9 denies the allegations of Paragraph 95 of the FAC.

10        96. The allegations of Paragraph 96 of the FAC are legal arguments or conclusions as  
11 to which no responsive pleading is required. To the extent a response may be required, Prudential  
12 denies the allegations of Paragraph 96 of the FAC.

13        97. The allegations of Paragraph 97 of the FAC are legal arguments or conclusions as  
14 to which no responsive pleading is required. To the extent a response may be required, Prudential  
15 denies the allegations of Paragraph 97 of the FAC.

16        98. The allegations of Paragraph 98 of the FAC are legal arguments or conclusions as  
17 to which no responsive pleading is required. To the extent a response may be required, Prudential  
18 denies the allegations of Paragraph 98 of the FAC.

19       99. The allegations of Paragraph 99 of the FAC are legal arguments or conclusions as  
20 to which no responsive pleading is required. To the extent a response may be required, Prudential  
21 denies the allegations of Paragraph 99 of the FAC.

**COUNT II**

24       100. Paragraph 100 is a mere reiteration of past allegations to which no response is  
25 required. To the extent a response may be required, Prudential incorporates its earlier responses to  
26 the foregoing paragraphs.

1       101. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required  
 2 to the allegations of Paragraph 101 of the FAC. To the extent a response may be required,  
 3 Prudential denies the allegations of Paragraph 101 of the FAC.

4       102. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required  
 5 to the allegations of Paragraph 102 of the FAC. To the extent a response may be required,  
 6 Prudential denies the allegations of Paragraph 102 of the FAC.

7       103. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required  
 8 to the allegations of Paragraph 103 of the FAC. To the extent a response may be required,  
 9 Prudential denies the allegations of Paragraph 103 of the FAC.

#### **Unlawful Conduct**

11       104. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required  
 12 to the allegations of Paragraph 104 of the FAC. To the extent a response may be required,  
 13 Prudential denies the allegations of Paragraph 104 of the FAC.

#### **Unfair Conduct**

15       105. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required  
 16 to the allegations of Paragraph 105 of the FAC. To the extent a response may be required,  
 17 Prudential denies the allegations of Paragraph 105 of the FAC.

18       106. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required  
 19 to the allegations of Paragraph 106 of the FAC. To the extent a response may be required,  
 20 Prudential denies the allegations of Paragraph 106 of the FAC.

21       107. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required  
 22 to the allegations of Paragraph 107 of the FAC. To the extent a response may be required,  
 23 Prudential denies the allegations of Paragraph 107 of the FAC.

24       108. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required  
 25 to the allegations of Paragraph 108 of the FAC. To the extent a response may be required,  
 26 Prudential denies the allegations of Paragraph 108 of the FAC.

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109. This claim has been dismissed, Dkt. 29 at 10, and therefore no response is required to the allegations of Paragraph 109 of the FAC. To the extent a response may be required, Prudential denies the allegations of Paragraph 109 of the FAC.

**COUNT III**

110. Paragraph 110 is a mere reiteration of past allegations to which no response is required. To the extent a response may be required, Prudential incorporates its earlier responses to the foregoing paragraphs.

111. The allegations of Paragraph 111 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, Prudential denies the allegations of Paragraph 111 of the FAC.

112. The allegations of Paragraph 112 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, Prudential denies the allegations of Paragraph 112 of the FAC.

113. The allegations of Paragraph 113 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, Prudential denies the allegations of Paragraph 113 of the FAC.

114. The allegations of Paragraph 114 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, Prudential denies the allegations of Paragraph 114 of the FAC.

115. The allegations of Paragraph 115 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, Prudential denies the allegations of Paragraph 115 of the FAC.

116. The allegations of Paragraph 116 of the FAC are legal arguments or conclusions as to which no responsive pleading is required. To the extent a response may be required, Prudential denies the allegations of Paragraph 116 of the FAC.

1       117. The allegations of Paragraph 117 of the FAC are legal arguments or conclusions as  
2 to which no responsive pleading is required. To the extent a response may be required, Prudential  
3 denies the allegations of Paragraph 117 of the FAC.

4       118. The allegations of Paragraph 118 of the FAC are legal arguments or conclusions as  
5 to which no responsive pleading is required. To the extent a response may be required, Prudential  
6 denies the allegations of Paragraph 118 of the FAC.

7       119. The allegations of Paragraph 119 of the FAC are legal arguments or conclusions as  
8 to which no responsive pleading is required. To the extent a response may be required, Prudential  
9 denies the allegations of Paragraph 119 of the FAC.

10      120. The allegations of Paragraph 120 of the FAC are legal arguments or conclusions as  
11 to which no responsive pleading is required. To the extent a response may be required, Prudential  
12 denies the allegations of Paragraph 120 of the FAC.

13      121. The allegations of Paragraph 121 of the FAC are legal arguments or conclusions as  
14 to which no responsive pleading is required. To the extent a response may be required, Prudential  
15 denies the allegations of Paragraph 121 of the FAC.

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1                   **AFFIRMATIVE DEFENSES**

2                   Prudential asserts the following affirmative defenses. By enumerating the subjects below as  
 3 affirmative defenses, Prudential does not concede that any such matter is an affirmative defense, as  
 4 opposed to an element of Plaintiffs' claim as to which it bears the burden of proof. Prudential does  
 5 not assume the burden of proving any fact, issue, or element of a cause of action where such burden  
 6 properly belongs to Plaintiffs. Moreover, nothing stated herein is intended to or shall be construed  
 7 as an acknowledgement that any particular issue or subject matter necessarily is relevant to  
 8 Plaintiffs' allegations.

9                   **FIRST AFFIRMATIVE DEFENSE**  
 10                  **(STANDING/LACK OF INJURY)**

11                  Plaintiffs lack standing because they did not suffer any concrete injury and they did not  
 12 suffer any of the injuries alleged in the Amended Complaint. Plaintiffs do not and cannot allege  
 13 any invasion of privacy rights or any wrongful disclosure. Plaintiffs lack standing to bring claims  
 14 pursuant to California Penal Code sections 631 because they consented to the alleged activities.

15                  **SECOND AFFIRMATIVE DEFENSE**  
 16                  **(CONSENT, RATIFICATION)**

17                  Plaintiffs consented and/or ratified the alleged activities by assenting to Prudential's privacy  
 18 notice.

19                  **THIRD AFFIRMATIVE DEFENSE**  
 20                  **(ACTS OF THIRD PARTIES)**

21                  Damages or injuries suffered by Plaintiffs, if any, are attributable to the conduct, deeds,  
 22 words, acts and/or omissions of third parties, and not Prudential.

23                  **FOURTH AFFIRMATIVE DEFENSE**  
 24                  **(FAILURE TO MITIGATE DAMAGES)**

25                  Plaintiffs failed to mitigate their damages, if any damages exist, which results in a reduction  
 26 of damages by the amounts by which Plaintiffs could have mitigated damages but did not do so.

27                  **FIFTH AFFIRMATIVE DEFENSE**  
 28                  **(LACHES)**

29                  Plaintiffs' claims for relief are barred by the equitable doctrine of laches.

## **SIXTH AFFIRMATIVE DEFENSE (WAIVER)**

Plaintiffs' claims for relief are barred by the equitable doctrine of waiver.

## **SEVENTH AFFIRMATIVE DEFENSE (ESTOPPEL)**

Plaintiffs' claims for relief are barred by the equitable doctrine of estoppel.

## **EIGHTH AFFIRMATIVE DEFENSE (ACQUIESCENCE)**

Plaintiffs' claims for relief are barred by the equitable doctrine of acquiescence.

**NINTH AFFIRMATIVE DEFENSE**  
**(PENALTIES UNJUST, ARBITRARY AND OPPRESSIVE, OR CONFISCATORY)**

Plaintiffs are not entitled to recover any civil penalties because, under the circumstances of this case, any such recovery would be unjust, arbitrary and oppressive, or confiscatory.

## **TENTH AFFIRMATIVE DEFENSE (DUE PROCESS)**

Plaintiffs are not entitled to recover any civil penalties because, under the circumstances of this case, any such recovery would violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

## **ELEVENTH AFFIRMATIVE DEFENSE (PUBLIC POLICY)**

Plaintiffs' allegations and attempts to construe California Penal Code section 631 as prohibiting Prudential from performing the activities alleged in the Amended Complaint constitutes a strained reading of these sections of the California Penal Code against public policy.

## **TWELFTH AFFIRMATIVE DEFENSE (GOOD FAITH/LACK OF INTENT)**

At all relevant times, Prudential acted in good faith and had no intent to violate California Penal Code section 631.

## **ADDITIONAL AFFIRMATIVE DEFENSES**

2 Prudential has alleged the affirmative defenses of which it is currently aware. Prudential  
3 may become aware of additional affirmative defenses available to it after further discovery and/or  
4 investigation. Accordingly, Prudential reserves the right to assert additional affirmative defenses  
5 once such defenses have been fully ascertained. If so, Prudential will move to amend this Answer  
6 and Affirmative Defenses.

## **PRAAYER FOR RELIEF**

WHEREFORE, Defendants pray as follows:

9           1. That Plaintiffs recover nothing by reason of its FAC, and that the FAC be  
10 dismissed with prejudice;

11           2. That Defendants be awarded their costs and expenses of suit, including reasonable  
12 attorneys' fees; and

13           3. For such other and further relief as the Court deems just and proper.

## **DEMAND FOR JURY TRIAL**

17 Pursuant to Fed. R. Civ. P. 38(b), Prudential demands trial by jury of all issues so triable  
18 under the law.

20 | DATED: July 24, 2023

MUNGER, TOLLES & OLSON LLP

By: /s/ Kelly M. Klaus  
KELLY M. KLAUS

Attorneys for Defendants  
PRUDENTIAL FINANCIAL, INC. and  
ACTIVEPROSPECT, INC